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**NEPAL GAZETTE**

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**PART 2**

Government of Nepal

**Ministry of Law and Justice**

The following Act enacted by the Constituent Assembly acting as the Parliament as stipulated in Article 83 of the Interim Constitution of Nepal, 2063 is published in the public interest.

Act No. 7 of Sambat 2068

**AN ACT MADE TO PROVIDE FOR THE CONSTITUTION OF THE INVESTMENT BOARD**

**PREAMBLE**: Whereas, it is expedient to make legal provisions in order to constitute an Investment Board with full authority for the economic development of the country by creating an investment-friendly environment by means of mobilizing and managing public-private partnership, cooperative and domestic and foreign private investments, and for making the process of industrialization orderly and rapid, and for the development of infrastructure and other sectors to create employment opportunities, and to offer meaningful contribution to poverty alleviation,

The Constituent Assembly, functioning as Parliament under Article 83 of the Interim Constitution of Nepal, 2063, has made this Act.

**1. Short Title and Commencement:**

- (1) The name of this Act shall be “Investment Board Act, 2068.”
- (2) This Act shall commence immediately.

**2. Definitions:** Unless the subject or context otherwise requires, in this Act;

- a) “Board” means the Board constituted as per the provision of Section 3.
- b) “Member” means a member of the Board and it shall refer to the Chairperson also.
- c) “Office” means the office organized as per the provision of Section 6.
- d) “Investment” means the project investment as per Section 9.
- e) “Prescribed” or “As prescribed” means prescribed or as prescribed in the rules as framed under this Act.

**3. Constitution of the Board:** The following Investment Board shall be constituted for creating an investment-friendly environment and for mobilizing and managing public-private partnership, cooperative and domestic and foreign private investments required for the development of infrastructure and other sectors :-

- |   |                  |
|---|------------------|
| a) Prime Minister   | Chairperson      |
| b) Minister assigned for the Investment Board by the Prime Minister | Vice-Chairperson |
| c) Minister of Finance  | Member           |
| d) Minister for Industry  | Member           |
| e) Minister for Forests   | Member           |
| f) Vice-Chairperson of the National Planning Commission             | Member           |

- |  |                  |
|--|------------------|
| g) Governor of Nepal Rastra Bank   | Member           |
| h) Chief Secretary of Government of Nepal  | Member           |
| i) Four persons including at least one female, nominated by the Board from among experts from the industry, tourism, infrastructure development, commercial law and finance sectors. | Member           |
| j) Chief Executive Officer of the Office   | Member-Secretary |

**4. Procedure for Board Meeting:**

- a) The date, venue, and time for The Board Meeting shall take place as fixed by the Chairperson.
- b) The Board Meeting shall be chaired by the Chairperson and in his/her absence by the Vice-Chairperson.
- c) The Board can invite, as required, Minister of any concerned Ministry, Secretary of any concerned Ministry, any officer of the Government of Nepal or any other national or international expert to the Board Meeting.
- d) The decisions of the Board shall be recorded and certified by the Member-Secretary.
- e) Other required procedures for the conduct of the Board Meeting shall be as established by the Board.

**5. Duties, Responsibilities, and Authority of the Board:** The duties, responsibilities, and authority of the Board shall be as follows :-

- a) To formulate or get formulated the policy for investment,
- b) To select or get selected priority sectors or competitive sectors from among the investment sectors as enunciated in Section 9,
- c) To select projects worthy of investment and to conduct invitation for proposals, evaluation of proposals received, negotiations with investors, approval of investment, getting agreement as prescribed done with the proponent,
- d) To monitor or get monitored construction, implementation or execution related activities as per the agreement regarding investment,

- e) To fix perks and benefits and provide these, but, before providing the perks and benefits, definite norms and standard procedures have to be established.
- f) To establish norms for project analysis, to fix conditions for investment, and to enter into agreement with investors,
- g) To make available government land or to arrange for acquirement of land as per existing rules and regulations, for the purpose of approved investments,
- h) To coordinate with various ministries, government and local agencies, for investment promotion,
- i) To make quick decisions and to enhance problem solving,
- j) To mobilize or get mobilized Nepal's foreign missions in order to promote investments,
- k) To activate other prescribed means for investment promotion.

**6. Office of the Board :**

- a) There shall be an Investment Board Office for recommending to the Board for approval of those projects which have been found appropriate for investment after thorough evaluation.
- b) The Chief Executive Officer (CEO) shall be the Chief of the Office and shall work full time.
- c) The Office can employ, if deemed necessary, an advisor or a panel of Nepali experts. But, if a Nepali expert is not available, the services of a foreign expert can be procured.
- d) The Office can invite any subject expert, businessman, investor, or any officer of the Government of Nepal or any employee of a government owned organization to attend its meetings, as deemed necessary.
- e) The evaluation criteria and procedures for project investment shall be determined by the Board.

**7. Duties, Responsibilities, and Authority of the Office:** The duties, responsibilities, and authority of the Office shall be as follows :-

- a) To invite proposals from investors, on a competitive basis, as prescribed, for projects approved by the Board,
- b) To evaluate investment proposals submitted by the investors and to make a project analysis and submit these to the Board,
- c) To negotiate or enter into an agreement with the investor on the basis of the conditions approved by the Board,
- d) To motivate the investors to execute the project as per the agreement,
- e) To monitor the implementation of the project, and to recommend to the Board for rescinding the permission, as prescribed, if it is found that the implementation is lagging behind the time frame,
- f) To solve problems in project implementation,
- g) To warn the investor for any delay in implementation and to recommend for action if the delay continues in spite of warnings,
- h) To make available to the investors fiscal or non-fiscal perks and benefits as agreed,
- i) To submit to the Board suggestions for revision, if found that the benefits provided to an investor are inadequate, or for any other reason causing the investor to be de-motivated,
- j) To submit to the Board appropriate recommendations if a specific investment sector or sub-sector requires special attention,
- k) To perform administrative or other tasks that the Board specifies.

**8. Expert Committees or Task Force:**

- a) On approval of the Board, the Office can appoint an Expert Committee or a Task Force, consisting of relevant experts to study and analyze specific technical aspects of an investment project and to submit to the Board appropriate recommendations.
- b) The Expert Committee or Task Force, thus constituted, shall submit its report within the time frame allocated after completing the study of the specified aspects.

- c) The guidelines for the tasks of the Expert Committee or Task Force shall be established by the Office at the time of constituting the Expert Committee or Task Force.

**9. Project Investment :**

(1) Irrespective of whatever stipulation made in existing laws, the investment required for implementation of the kind of projects stated below, shall be mobilized based on this Act :-

- a) Fast track road, Tunnel, Railway line, Rope-way, Trolleybus as prescribed by Government of Nepal,
- b) Investment required for construction of International and Regional Airports and investment required for modernization and management of existing airports,
- c) Investment required for Solid Waste Management and Treatment in urban areas,
- d) Investment required for Chemical Fertilizer production industries,
- e) Investment required for Petroleum Refinery Plants,
- f) Investment required for Major Bridges as prescribed by Government of Nepal,
- g) Investment required for Banks and Financial Institutions whose fifty-one percent or more investment is borne by foreign investors, and investment required for establishing Insurance and Re-Insurance Companies,
- h) Investment required for establishing Medical Colleges and state-of-the-art Hospitals or Nursing Homes that will have three hundred beds or more,
- i) Investment required for Hydropower projects of 500 megawatt (MW) or more capacity,
- j) Investment required for the development of Special Economic Zones (SEZs), Export Promotion or Export Refinement Zones, Special Industrial Zones or IT Parks,
- k) Investment required for any infrastructure or service industry that has a paid-up capital of Rs. 10 billion or a project cost exceeding that amount.

*Note: For the purpose of this section, the term 'infrastructure or service industry' means any industry that is a part of construction industry, mining industry, tourism industry, aviation industry.*

- l) Investment required to support any foreign investment in a productive industry that has a paid-up capital of Rs. 10 billion or a project cost exceeding that amount.
- m) Investment required for any project prescribed by Government of Nepal that fall into the categories as mentioned in paragraphs a) to l) above.

(2) Without prejudice to the generality of the powers conferred by sub-section (1), in case of the Board receiving any complaints regarding any form of obstruction, prevention, or discouragement in the process of investment on any project implemented with due process of law, the Board can take a decision on such investment and instruct the concerned agency to implement the decision.

#### **10. Submitting application to the Board :**

- 1) Any person who desires to invest in a project within the scope of sectors as mentioned in Section 9 shall have to submit an application in the prescribed format along with the investment proposal and the payment of prescribed fee.
- 2) On receipt of an application pursuant to sub-section 1), the CEO shall make a preliminary evaluation of the application, and if found worthy of consideration, shall start the process of examination and assessment of financial, environmental, technical, social aspects of the proposed investment within seven days of receipt of the application.
- 3) On receipt of an application pursuant to sub-section 1), the Office shall make the necessary evaluation and submit it to the Board with a recommendation either for acceptance or for refusal of the proposal within thirty days of receipt of the application.

*But, if, due to any reasonable cause, the recommendation can not be made within the stipulated period, the Board can extend the deadline on request of the Office.*

- 4) Before making a recommendation pursuant to sub-section 3), if it is found necessary to study, analyze, or examine on any technical aspect of the said proposal, the Office can employ the services of an Expert Committee or a Task Force pursuant to Section 8.

- 5) On receipt of the recommendation pursuant to sub-section 3), the Board shall, within seven days, take a decision on whether to accept the project investment proposal with conditions or without conditions or to reject the proposal, and convey its decision to the applicant.
- 6) Before conveying its decision to the applicant, pursuant to sub-section 5), if the Board deems it necessary to negotiate with the applicant, the Board can negotiate with the applicant through the Office.
- 7) If negotiation is required pursuant to sub-section 6), the Office shall fix a venue and time for the negotiation and invite the applicant for negotiation within seven days of the Board's decision.
- 8) After the negotiation pursuant to sub-section 6), based on the outcome of the negotiation and the recommendation of the Office, the Board shall take a decision on whether to accept the project investment proposal with conditions or without conditions or to reject the proposal, and convey its decision to the applicant.
- 9) On acceptance of the project investment proposal pursuant to sub-sections 5) and 8), the Board shall issue a license, in the prescribed format, to implement the project under the prevailing laws, after payment by the applicant of the prescribed fee.
- 10) Within fifteen days of acknowledgement of the decision of acceptance of the proposal pursuant to this Section, the applicant shall comply with the necessary conditions and obtain the license, and within fifteen days of obtaining the license, the investor should complete the tasks of registration of the project and registration of its company, as provisioned by the prevailing laws.
- 11) If the applicant is unable, due to any reasonable cause, to obtain the license or to obtain registrations pursuant to sub-clauses 9) or 10), he/she can request the Board through the Office for an extension of deadlines and the Board, upon request, can extend the deadlines.

But, such extensions shall normally be not of more than a month.

- 12) If Initial Environmental Examination (IEE) or Environmental Impact Assessment (EIA) is required for any project that is given license for implementation



pursuant to sub-section 9), the Board, based on the nature of the project, shall allow a time period of three months for that purpose, irrespective of the provisions in other prevailing laws, and the investor has to complete the study and submit it to the prescribed agency in the prescribed format within that timeframe.

- 13) If the investor is not able to complete the study in the timeframe pursuant to sub-section 12), and makes a written request for extension, the Board can give a time extension of a maximum of additional three months.
- 14) The concerned agency to which the investor has submitted its environmental impact report has to complete its assessment of the report and take a decision within twenty-one days of submission.
- 15) Except in circumstances beyond its control, if the officer responsible for taking a decision does not do so citing other reasons, the Board can recommend to Government of Nepal to take legal action on that officer.
- 16) Irrespective of whatever is stated elsewhere in this Act, project construction can not start based either on the investment license obtained pursuant to sub-section 9) or registered pursuant to sub-section 10), if environmental clearance is not obtained.
- 17) If any investor starts construction work without complying with the requirements cited in this Section, the Board can take any or all of the following actions :-
  - a. Stop construction,
  - b. Rescind the license,
  - c. Overtake the project and seize property.

#### **11. Fulfilment of due process :**

- 1) Notwithstanding anything written in other prevailing laws, as per this Act, the acceptance by the Board of the project investment proposal and thereby, obtaining a license pursuant to sub-section 10), the license shall be deemed as obtained on fulfilment of due process.

- 2) There shall be no provisions made in legal, administrative, or policy documents that would adversely affect the terms and conditions of the issued licences within the time of validity of the licenses and any adversely affecting provisions made in the legal, administrative, and policy documents would not be acceptable.

**12. Facilities to be obtained as per law:**

The investment made under the licence issued as per this Act shall accrue all kinds of protection, facilities, concessions, and exemption provided by the prevailing laws on Foreign Investment and Technology Transfer and any other legal instrument catering to industries, besides the provisions made in this Act.

**13. Chief Executive Officer :**

- a) The Board shall have a Chief Executive Officer (CEO) for day-to-day administration of the Board and to compile and process the work of the Board.
- b) The CEO shall be the chief administrative officer and a full time employee of the Board and his salary and other benefits shall be as prescribed by Government of Nepal.
- c) A Nepali citizen fulfilling the following requirements shall be appointed as the CEO :-
  - a. At least a Master's degree in Economics, Management, Engineering or Project Analysis, Commercial Law and having at least ten years' experience in relative field and being highly competent,
  - b. Thirty-five years or older.
- d) For the purpose of recommending to the Board for the appointment of the CEO, Government of Nepal shall constitute a selection committee having the Vice-Chairperson of the Board as coordinator and comprising of the Vice-Chairperson of National Planning Commission and an ex-Secretary of the Government of Nepal as members and this committee shall select the names of three suitable candidates on the basis of competition following a prescribed procedure and recommend these names for final selection.

- e) From among the persons recommended pursuant to sub-section d), the Cabinet of the Government of Nepal shall appoint one person as CEO.
- f) The tenure of the CEO shall be four years and he/she can be appointed for one more tenure period.
- g) The position of the CEO can fall vacant under the following circumstances :-
  - a. If he/she submits his resignation to the Board,
  - b. If he/she is deceased,
  - c. If his/her work performance is found unsatisfactory and Government of Nepal dismisses him/her,
  - d. If his/her tenure is over

*Before dismissing the CEO pursuant to sub-section g).c. Government of Nepal has to seek an explanation from him/her.*

**14. Duties, Responsibilities, and Authority of the CEO :**

- a) Besides the duties, responsibilities, and authorities mentioned elsewhere in this Act, the following shall be the duties, responsibilities, and authority of the CEO :-
  - a. To prepare the Agenda for Board Meetings,
  - b. To prepare a list of proposals received by the Board and submit these to the Board along with their evaluation,
  - c. To execute the decisions and directives of the Board,
  - d. To formulate the annual budget and programme for the Board and the Office and submit these for Board's approval,
  - e. To do or get done the activities of monitoring, review, and evaluation of implementation status of projects approved by the Board,
- b) Other duties, responsibilities, authority will be as prescribed.

**15. Appointment, Tenure, and Termination of Members:**

- 1) Appointment of nominated Members as per Section 3, i, shall be made by the Prime Minister and their tenure will be two years. They may be re-nominated.
- 2) Under any of the circumstances of either submitting resignation to the Prime Minister, or death, or removal by the Prime Minister as prescribed for poor

performance, or at the end of tenure, the nominated Member's service shall come to termination.

- 3) In case of termination of the services of a Member pursuant to sub-section 2) another Member shall be nominated only for the remaining period of tenure.

**16. Special arrangement for the Approval of Projects:**

Notwithstanding anything said elsewhere in this Act, the Board can give permission for investment in any investment sector through direct negotiation under the following conditions:-

- a) Inability to select a proposal in required numbers even after at least two invitations for proposals,
- b) Probability of competition not existing,
- c) New concept and technology adopted,
- d) Cost estimate exceeding twenty billion rupees,
- e) Inappropriate to follow other procedures stipulated in this Act for some reason,

**17. Possibility of extra incentives awarded by the Board:**

- 1) Notwithstanding anything said elsewhere in this Act, in addition to the incentives pursuant to Section 12 of this Act at the time of commencement of this Act, the Board can award extra financial incentive as prescribed, for prescribed projects, by publishing a notification in the Nepal Gazette.
- 2) Notwithstanding anything said in the prevailing laws, there shall be no restriction to utilize the incentives as awarded under this Act till the prescribed period of time.

*However, the Board can withdraw the incentive/s if it is determined that the incentive/s awarded at the time of permission under this Act, are being misused. But, before the withdrawal of incentive/s, opportunity is to be given for clarification.*

**18. Safety and Protection of Investment:**

1. The investment made under this Act shall not be nationalized over the valid period of license.

2. Another investment of similar nature in the same area or sector that could adversely impact upon the investment made under competitively obtained license, shall not be given license to, till a prescribed period.
3. Once a license is issued, the conditions stated in it shall not, normally, be altered, except in cases where there has been a mistake.

**19. Power to remove difficulties:** If any difficulty arises in connection with the implementation of this Act, Government of Nepal may issue orders to remove such difficulty by notification published in the Nepal Gazette.

**20. This Act to prevail:** Notwithstanding anything contained in the existing laws, the matters stipulated in this Act shall be dealt with accordingly.

**21. Contact with Government of Nepal:** For contacts with the Government of Nepal, the Board shall contact through the Prime Minister and Cabinet's Office.

**22. Power to frame Rules:** The Board can frame necessary rules to carry out the objectives of this Act.

**23. Dismantling of the Board**

(1) If the Government of Nepal takes the decision to dismantle the Board for a reasonable cause, the Board can be dismantled.

(2) If the Board is dismantled pursuant to sub-section (1), then the rights, assets, and liabilities of the Board shall be transferred to the Government of Nepal.

*Attested on: BS 2068/05/23 (09/09/2011 AD)*

By the order of,

RAJU MAN SINGH MALLA

Officiating Secretary of Government of Nepal